

BEFORE THE
Federal Communications Commission
 WASHINGTON, DC 20554

AUG - 4 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Cellular Service and Other Commercial Mobile)
Radio Services in the Gulf of Mexico)

WT Docket No. 97-112

Amendment of Part 22 of the Commission's)
Rules to Provide for Filing and Processing of)
Applications for Unserved Areas in the Cellular)
Service and to Modify Other Cellular Rules)

CC Docket No. 90-6

**REPLY COMMENTS OF
 PRIMECO PERSONAL COMMUNICATIONS, L.P.**

PrimeCo Personal Communications, L.P. ("PrimeCo" or the "Company"), on behalf of itself and the partnerships in which it is the sole general partner/majority owner, hereby files reply comments in the above-referenced proceeding. For the reasons stated herein, the record supports the determination that incumbent MTA and BTA PCS service area licensees have existing rights to provide service to customers in the Gulf of Mexico ("Gulf"). The Commission should expressly confirm this fact. The record further supports PrimeCo's comments that allocation of new PCS licensees in the Gulf will create a "Zone of Chaos" to the detriment of existing licensees and the public interest.

SUMMARY

The record demonstrates that incumbent PCS licensees have existing rights to serve the Gulf's offshore areas. The record further demonstrates that the Commission may not lawfully abridge these rights and modify existing PCS licenses

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The Commission should reject the arguments set forth by the American Petroleum Institute and Shell Offshore Services Company. These parties' service area and frequency allocation proposals would ignore the rights of existing viable CMRS competitors in the Gulf and must be rejected.

Finally, the record demonstrates that the public interest would be ill-served by licensing additional water-based PCS licensees to serve the Gulf. Rather, the public interest would be served by confirming incumbent PCS licensees' existing rights to serve the Gulf's offshore areas.

I. THE RECORD DEMONSTRATES THAT INCUMBENT PCS LICENSEES HAVE EXISTING RIGHTS TO SERVE THE GULF'S OFFSHORE AREAS

The record in the instant proceeding supports the conclusion, as set forth in PrimeCo's comments, that incumbent PCS licensees have existing rights to serve the Gulf's offshore areas. Numerous commenters have noted that incumbent PCS licensees — by virtue of MTA/BTA service area definitions, the *Mobil Oil Telecom* decision, and the Commission's service and technical rules — have existing service rights that may not be abridged.¹ Comments filed by other CMRS licensees also support this conclusion.²

¹ See, e.g., Comments of Aerial Communications in WT Docket No. 97-112, filed July 2, 1997, at 3-5; Comments of ALLTEL in WT Docket No. 97-112, filed July 2, 1997, at 5; Comments of BellSouth in WT Docket No. 97-112, filed July 2, 1997, at 10-11. (continued...)

Furthermore, many additional commenters who did not address the issue of incumbent PCS licensees' *existing* rights agree that incumbent PCS licensees *should* be authorized to serve into the Gulf's offshore areas.³

In addition, in a decision released just prior to the deadline for filing comments, the Commission has again confirmed that incumbent PCS licensees are currently authorized to serve the Gulf's offshore areas.⁴ In the June 26, 1997 *Second Report and Order and Second Further Notice of Proposed Rulemaking* regarding

¹ (...continued)

1997, at 5-6; Comments of PrimeCo in WT Docket No. 97-112, filed July 2, 1997, at 4-14; Comments of Sprint Spectrum, L.P. in WT Docket No. 97-112, filed July 2, 1997, at 4-6; *see also* Comments of the American Petroleum Institute in WT Docket No. 97-112, filed July 2, 1997, at 5-6 (requesting that the Commission "rededicate" this band to fixed point-to-point microwave).

² *See, e.g.*, Comments of AMTA in WT Docket No. 97-112, filed July 2, 1997, at 6 (a new Gulf service area would deprive 900 MHz MTA SMR licensees of some of the "asset" they acquired); Comments of Benbow PCS Ventures, Inc. in WT Docket No. 97-112, filed July 2, 1997, at 2 (separate Gulf licensing would unlawfully modify narrowband PCS authorization); Comments of DW Communications in WT Docket No. 97-112, filed July 2, 1997, at 2-3 (regarding 900 MHz SMR MTA licensing).

³ *See, e.g.*, Comments of AT&T Wireless Services in WT Docket No. 97-112, filed July 2, 1997, at 2 (WCS "12 nautical mile" service area plan should apply to cellular and PCS); Comments of GTE Service Corp. in WT Docket No. 97-112, filed July 2, 1997, at 7-8 (land-based CMRS providers' areas should extend 25-50 miles from the Gulf coast); Comments of Petrocom in WT Docket No. 97-112, filed July 2, 1997, at 18 (land-based PCS carriers should be authorized to serve the coastal areas of the Gulf).

⁴ As noted, PrimeCo and other commenters maintain that the Commission has already acted to authorize incumbent PCS licensees to serve Gulf offshore areas. *See supra* notes 1 and 2.

maritime communications services,⁵ the Commission stated that certain of its rule changes would:

[E]xpand[] the range of communications services public coast station licensees may offer and foster[] a regulatory environment in which public coast stations may more effectively compete against other CMRS providers *such as cellular, PCS, and SMR, operating in coastal areas which presently have no restrictions on serving vessels located in each CMRS licensees' service area.*⁶

The Commission further stated:

[T]he competitive state of the coastal marketplace *already enables vessel operators operating along the coast to choose among a number of other CMRS providers including cellular, PCS, SMR and satellite communications.* These services *have been extremely competitive in some coastal markets,* often contributing to the closure of VHF public coast stations.⁷

Thus, the Commission has yet again explicitly acknowledged that PCS licensees are authorized to serve the Gulf's offshore areas. For this reason, any plan to modify incumbent PCS licensees' existing rights to serve the Gulf's offshore areas must — at a minimum — recognize these existing rights and adequately compensate the incumbents for the reduction of their MTA and BTA service areas and any necessary system reconfiguration. Further, any Commission action taken herein must not undermine the

⁵ In this decision, the Commission adopted and proposed a number of rules governing VHF and AMTS public coast stations. *Amendment of the Commission's Rules Concerning Maritime Communications, Second Report and Order and Second Further Notice of Proposed Rulemaking*, PR Docket No. 92-257, RM-7956, RM-8031, RM-8352, FCC 97-217 (released June 26, 1997).

⁶ *Id.* ¶ 24 (emphasis added).

⁷ *Id.* ¶ 83 (emphasis added). The Commission's proposed service areas for VHF and AMTS public coast stations include the Gulf's offshore areas. *See id.* ¶ 77 (citing 33 C.F.R. §§ 3.35-1, 3.40-1).

ability of incumbent PCS licensees to reliably serve customers in their existing MTA and BTA service areas.⁸

II. PROPOSED RESTRICTIONS ON GULF PCS SERVICE WOULD BE ANTICOMPETITIVE AND MUST BE REJECTED

Shell Offshore Services Company ("SOSC") and the American Petroleum Institute ("API") seek to ignore the rights of existing PCS licensees and to preclude the possibility of viable service competitors in the Gulf. Their arguments should be rejected. As former D.C. Circuit Judge Avner Mikva once noted, "[i]t sometimes seems inevitable that any effort by a regulatory agency to authorize improved service in the regulated industry brings sharp protest from existing businesses."⁹ As these parties' comments illustrate, a similar situation has been triggered by the Commission's authorization of broadband PCS in the Gulf.

SOSC once argued in relation to telecommunications services in the Gulf that "the Commission has long rejected the argument that the existence of incumbent

⁸ See PrimeCo Comments at 7; *see also supra* notes 1 and 2. The Commission has routinely accommodated the interests of incumbent licensees when the Commission changes their technical or service area rules. *See, e.g.* 47 C.F.R. § 101.69-101.81 (requiring PCS licensees to compensate microwave incumbents for relocation costs); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, 11 FCC Rcd. 1464, 1516 (1995) (requiring new wide-area SMR licensees to afford interference protection to incumbent SMR systems); *Amendment of Part 22 of the Commission's Rules*, 6 FCC Rcd. 6185, 6204 (1991) (denying unserved area applicants rights to interference protection against incumbent MSA or RSA cellular licensees whose five-year fill-in has not expired).

⁹ *WJG Tel. Co. v. FCC*, 675 F.2d 386, 391 (D.C. Cir. 1982).

carrier networks provides a basis for denying applications for competing systems.”¹⁰

Now, as the sole Gulf of Mexico WCS licensee, and the licensee of common carrier digital microwave stations in the 6 GHz band, SOSC appears to advocate closing the door on genuinely viable competitors who have existing service rights.¹¹

Thus, while SOSC acknowledges that there is a demand for CMRS spectrum in the Gulf of Mexico, it apparently opposes PCS licensing for the Gulf — including the PCS licenses already issued to incumbent PCS licensees to serve the Gulf’s offshore areas.¹² SOSC further argues that new service area boundaries for water-based Gulf licensees in other CMRS services include the entire Gulf of Mexico *from the coastline outward*.¹³ As discussed in PrimeCo’s and other parties’ comments, however, adopting such a new service area allocation would result in an unlawful license modifica-

¹⁰ *Shell Offshore Services Co., Order and Authorization*, DA 96-1458, 4 Comm. Reg. (P&F) 847, 853 ¶ 28 (Int’l Bur/Wireless Telecom. Bur. released Aug. 29, 1996); Public Notice, *FCC Announces the Grant of Wireless Communications Service (“WCS”) Licenses*, DA 97-1552, Attachment A (released July 21, 1997).

¹¹ Notwithstanding SOSC’s and API’s expressed concern for the impact of PCS on the petroleum and natural gas industry’s Gulf-based operations, PrimeCo suspects that many companies in this industry would strongly favor a competitive telecommunications market in the Gulf and would be extremely reluctant — if not outright opposed — to having the corporate affiliate of one of their competitors as the primary provider of advanced telecommunications services. Indeed, many in the petroleum and natural gas industry have informally expressed to PrimeCo their preference for a non-industry based telecommunications service provider.

¹² Comments of SOSC in WT Docket No. 97-112, filed July 2, 1997, at 5-6, 7.

¹³ SOSC Comments at 10-11. API is supportive of the Commission’s cellular service area proposal, which (like SOSC’s proposal) would establish service areas from the coastline outward and, if imposed on PCS, would unlawfully alter MTA/BTA service area boundaries. *See Second Further Notice* ¶¶ 32, 60.

tion by altering existing MTA/BTA boundaries and PCS service rights.¹⁴ Thus, SOSC's service area scheme must be rejected.

The American Petroleum Institute ("API") goes even further, advocating that the Commission rededicate the 2 GHz spectrum currently allocated to PCS back to fixed point-to-point services in the Gulf.¹⁵ SOSC similarly asserts that PCS licensing should be rejected because the POFS systems of many companies would need to be relocated and would likely cause severe disruptions to the petroleum and natural gas industries.¹⁶

As PrimeCo has noted, however, PrimeCo and other incumbent PCS licensees *have already relocated POFS links in the Gulf* — including some of SOSC's links.¹⁷ API's proposal would also undermine incumbent PCS licensees' existing service rights and create new interference disputes between incumbent PCS licensees and POFS licensees. Furthermore, many companies in the petroleum and natural gas industries have both water- and land-based links and have in fact already insisted on a system-wide relocation as a condition of relocation for existing PCS operations. Imposing a bifurcated frequency plan at this time would thus also undermine incumbent PCS licensees' ongoing efforts to timely relocate incumbent licensees and undermine the Commission's policy

¹⁴ See *supra* notes 1 and 2.

¹⁵ API Comments at 5-6.

¹⁶ SOSC Comments at 8.

¹⁷ PrimeCo Comments at 12-13.

favoring system-wide relocation.¹⁸ The Commission's microwave relocation and frequency allocation rules apply on a nationwide basis, with no special or separate provisions for the Gulf.¹⁹ API's and SOSC's comments regarding PCS therefore also directly contravene the Commission's microwave relocation and frequency allocation rules and should be rejected for this reason as well.

API also argues further that "platforms in the Gulf are too widely separated to accommodate the installation of the multiple transmitters needed to sustain mobile operations in the 1850-1990 MHz band allocated for PCS."²⁰ As GTE and Aerial have noted, however, the very propagation characteristics that API characterizes as an *obstacle* to PCS service actually *enable* PCS and cellular providers to serve a considerable distance from land into the Gulf's offshore areas.²¹ Also, and as PrimeCo noted in its comments, the Commission's power, antenna height limits, and field strength limitations enable — and authorize — incumbent PCS licensees to provide reliable service into the Gulf's offshore areas.²² API's frequency allocation proposal would preclude existing

¹⁸ See *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, Second Report and Order*, WT Docket No. 95-157, FCC 97-48, ¶ 25 (released February 27, 1997); *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd. 8825, (1996).

¹⁹ See PrimeCo Comments at 12-13.

²⁰ API Comments at 8.

²¹ Aerial Comments at 4-5 (reliable service is possible at distances exceeding 25 miles); GTE Comments at 10 (reliable service possible at distance up to 50 miles); see also PrimeCo Comments at 16-17, n.42.

²² To the extent that offshore site availability renders "conventional PCS" infeasible
(continued...)

and viable PCS competitors from offering a marketable service in the Gulf's offshore areas, and would jeopardize service to existing customers. The Commission should therefore reject the arguments against authorizing PCS use of the 1850-1990 MHz band in the Gulf's offshore areas.²³

III. THE RECORD SUPPORTS THE CONCLUSION THAT CONFIRMING INCUMBENT PCS LICENSEES' EXISTING RIGHTS TO SERVE THE GULF'S OFFSHORE AREAS PROMOTES THE PUBLIC INTEREST

The comments submitted in the proceeding support the conclusion that (1) the public interest is best served by confirming that incumbent PCS licensees are expressly authorized to serve the Gulf's offshore areas; and (2) licensing separate water-based PCS providers would disserve the public interest. CMRS providers of all types have addressed the interference and technical problems — and the attendant detrimental impact on land-based operations — associated with water-based licensing.²⁴ Furthermore, other problems related to separate PCS licensing in the Gulf — *e.g.* roaming

²² (...continued)
in areas beyond the reach of MTA and BTA-based sites, PrimeCo submits that such problems are more appropriately addressed through Gulf-specific technical rules and/or the grant of waiver requests regarding, *e.g.*, power and antenna height limits.

²³ For the reasons stated in PrimeCo's filings, SOSC's request that licenses for Gulf-based CMRS licenses be auctioned would disserve the public interest. PrimeCo Comments at 21-26.

²⁴ *See, e.g.*, AT&T Comments at 6-8; Comments of 360 Communications in WT Docket No. 97-112, filed July 2, 1997, at 7; Paging Network Comments at 7-8; PrimeCo Comments at 15-21; Comments of the Council of Independent Communications Suppliers in WT Docket No. 97-112, filed July 2, 1997, at 3-4; Comments of DW Communications, Inc. in WT Docket No. 97-112, filed July 2, 1997, at 4; Sprint Comments at 4.

charges to consumers,²⁵ the economics and viability of stand alone water-based service,²⁶ and siting difficulties²⁷ — underscore the fact that an additional PCS licensing allocation would disserve the public interest.

In sum, the comments support PrimeCo's view that incumbent PCS licensees are expressly authorized (by already-issued licenses) to serve the Gulf's offshore areas.²⁸ In this regard, numerous commenters have noted that there is considerable boat traffic in the Gulf's offshore areas²⁹ and, as PrimeCo noted, incumbent PCS licensees are particularly well-suited to serve these consumers in the Gulf.³⁰ Comments also support the conclusion that confirming incumbent PCS licensees' existing authority to serve the Gulf's offshore areas would help the Commission avoid the interference and siting disputes that have plagued the deployment and regulation of Gulf cellular service.³¹

²⁵ See, e.g., AT&T Comments at 8-9; Palmer Wireless Comments at 9; PrimeCo Comments at 25; Southwestern Bell Comments at 8; Comments of Vanguard in WT Docket No. 97-112, filed July 2, 1997, at 5.

²⁶ See PetroCom Comments at 16-17; *see also* Southwestern Bell Comments at 8-9 ("Land-based carriers can economically serve much of [the Coastal Zone].").

²⁷ Palmer Wireless Comments at 7; Vanguard Comments at 6.

²⁸ See *supra* notes 1-3.

²⁹ Southwestern Bell Comments at 8; GTE Comments at 7-10.

³⁰ PrimeCo Comments at 21-22.

³¹ See Aerial Comments at 6. In a similar context, the Commission realized the shortcomings of its cellular MSA/RSA service area scheme, and opted instead for MTA/BTA licensing for PCS. See *Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order*, 8 FCC Rcd. 7700, 7732 (1993), *aff'd in relevant part, Memorandum Opinion and Order*, 9 FCC Rcd. 4957 (1994).

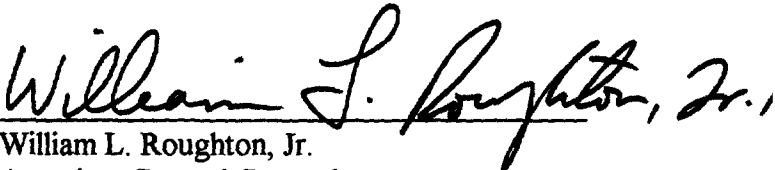
CONCLUSION

As discussed in PrimeCo's comments, a separate Gulf PCS licensing scheme risks creating a "Zone of Chaos" plagued by interference, facilities siting and microwave relocation disputes — all to the detriment of consumers and competition. Instead, the Commission's decision at the outset of the PCS licensing process to authorize service to the Gulf offshore areas serves the public interest.

For the reasons discussed in PrimeCo's filings and in supporting comments, the Commission should affirm the existing authority of incumbent MTA/BTA PCS licensees to serve the Gulf's offshore areas, and should ensure that incumbent MTA/BTA PCS licensees' service rights are not undermined or otherwise compromised by this proceeding.

Respectfully submitted,

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August 4, 1997